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FILED
JUN 16 1983
ALEXANDER L. STEVAS,
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No. 82-1666

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

JERRY LAIN BEHELER,

Respondent.

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT

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RESPONDENT HAS NOT SUSTAINED HIS BURDEN OF SHOWING HIS STATEMENTS WERE INVOLUNTARY

Respondent urges this Court to deny the petition for certiorari because this is the wrong case to decide the question presented. In support of this general

proposition, respondent claims: (1) his case is distinguishable from Mathiason because he was not aware of his "target status" under United States v. Washington (1977) 431 U.S. 181; (2) this case is directly controlled by Miranda v. Arizona (1966) 384 U.S. 436; and (3) overturning the appellate court's decision would cause "manifest injustice."

Petitioner, of course, has no quarrel with Proposition 2. This case is directly controlled by Miranda v. Arizona. Thus, it is a singularly appropriate case in which to decide the question presented. Indeed, respondent's rambling discourse on the meaning of "voluntary" is eloquent evidence of the urgent need for clarification.

Proposition 1 contains the main thrust of respondent's opposition. Its seemingly disparate arguments all swing

around a single fulcrum: the ultimate issue of voluntariness. Reduced to its essentials, respondent's argument is straightforward. Although he went voluntarily to the police station, thought he was acting voluntarily, and said he was acting voluntarily, his actions were not voluntary because he was not aware of the seriousness of his involvement and the police lulled him into a false sense of security by not arresting him. Respondent actually argues the failure to arrest "increases the compulsion to speak." (Opp., p. 10.) This is a creative argument but not a compelling one.

This case involves a noncustodial interrogation. In Miranda, this Court concluded compulsion was inherent in custodial surroundings. The existence of a custodial interrogation settles the question of compulsion. However, when a claim of coercion results from a noncustodial

interview, the claimant must show he was subjected to actual coercion. (See United States v. Alyea (10th Cir. 1980) 636 F.2d 1191, 1193; United States v. Vannelli (8th Cir. 1979) 595 F.2d 402, 406-407.)

Looking at the totality of circumstances surrounding the interrogation in this case, the court will be compelled to reject respondent Beheler's claim that his statements were involuntarily given.

First, appellant argues he did not aid the police "voluntarily" because he was unaware of his own potential criminal liability as well as his "target status."[1/]

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1. The "target status" language appears in United States v. Washington, supra, 431 U.S. 181. In Washington, a grand jury witness argued he should have received "potential defendant warnings." This Court rejected the defendant's claim, holding that target witness status neither enlarges nor diminishes the constitutional protection against compelled self-incrimination. (Id., at p. 189.) The court reiterated the need for a showing of overbearing compulsion as a prerequisite to a Fifth Amendment violation. (Id., at p. 190.)

It is possible that in some situations the fact a suspect is not aware of the offense under investigation would be of concern to the court in evaluating the totality of the circumstances. However, in analogous cases involving the knowing, intelligent, and voluntary waiver of Miranda rights, courts have held the police have no duty, as part of the Miranda warnings, to include a warning about the nature of the crime, the penalty, or the elements of the offense. (Collins v. Brierly (3rd Cir. 1974) 492 F.2d 735, 738.) The courts have consistently rejected the notion that a confession is per se inadmissible unless such information is included in the pre-interrogation litany. (Id., at p. 739.)

A suspect's ignorance of the substantive criminal law and the rules of evidence may make his waiver unintelligent, but Miranda does not require the police to go

beyond the prescribed warnings to make sure the person being questioned understands not only his right to remain silent but also the consequences of his failure to exercise it. (Harris v. Riddle (4th Cir. 1977) 551 F.2d 936, 938.)

> ". . . Miranda does not put upon the police the burden of explaining the rules of evidence and the substantive criminal law. The average interrogating police officer is not capable of it. It surely would have been helpful to Harris to have had a lawyer present to explain to him the felony-murder doctrine and the admissibility of an oral confession. But police officers cannot act as counsel even if the burden were properly theirs, and it is not."

In United States v. Hall (4th Cir. 1968) 396 F.2d 841, the court rejected a defendant's claim he was prevented from making a knowing and intelligent waiver because of his ignorance of the severe penalty which could be imposed for the crime charged. The court said:

> "The test is not whether [the defendant] made an intelligent decision in the sense that it was wise or smart to admit his participation in the crime, but whether his decision was made with the full understanding that he need say nothing and that he might then consult with a lawyer if he so desired." (United States v. Hall, supra, 396 F.2d at 846.)

Similarly, the test is not whether Beheler would have made the same decision to aid the police if he had first been given a detailed precis of the possible consequences, but whether the officers compelled him to make the statements. The question is not whether Mr. Beheler acted in his ultimate best interest; the question is whether he was coerced. The answer is no. The record is devoid of any hint of threats, coercion, or compulsion.

Consequently, respondent is forced to argue the police compelled him by the things they did not do. For instance, they told him he was not under arrest. This was

true. He was not under arrest nor was he arrested until several days after the initial interview.

The burden of showing the government is guilty of deception is on respondent. The record must disclose some affirmative misrepresentation to establish the existence of fraud, deceit, or trickery, and the showing must be clear and convincing. (United States v. Tweel (5th Cir. 1977) 550 F.2d 297, 299; United States v. Prudden (5th Cir. 1970) 424 F.2d 1021, 1032-1035.)

A truthful statement is not a misrepresentation and, being truthful cannot be regarded as evidence of coercion. (United States v. Mapp (7th Cir. 1977) 561 F.2d 685, 689.)

Respondent has failed to show any single element of coercion. The interview at issue here was conducted with respondent's full consent and cooperation. Although

respondent may not have been aware of the full legal ramifications of his conduct, he did know he was involved in the attempted robbery of Peggy Dean. He knew she had been killed in the process. He knew he had been involved in serious wrongdoing. He called the police.

Moreover, he was under no physical compulsion of any kind. He was free to leave at any time. He did leave at the conclusion of the interview. His statement was voluntary. The circumstances were by no means equivalent to a custodial interrogation. Therefore, Miranda warnings were not required.

Finally, respondent claims reversal of the court of appeal's opinion would result in manifest injustice. Most of respondent's argument deals with the applicability of nonmutual collateral estoppel to criminal cases. This Court analyzed the issue at

length in Standefer v. United States (1980) 447 U.S. 10, and declined to apply the doctrine in a criminal case, deciding that criminal cases involve competing policy considerations that outweigh the economic concerns undergirding the estoppel doctrine.

That question, however, is not at issue here. The court of appeal relied solely on Miranda in reversing respondent's conviction. Both parties requested rehearing. The Fifth District denied the request for rehearing, but modified its opinion and specified the charges on retrial can be no greater than voluntary manslaughter. Since respondent's liability rested solely on a felony murder theory, this "modification" effectively precludes retrial.

There is a question of manifest injustice here - injustice to the People.

Peggy Dean, the victim in this case, may not have been a model citizen, but

she was the victim of the ultimate violation of personal integrity: she was murdered. She is entitled to hold her assailants accountable for what the law requires.

Respondent's arguments should be rejected. This is the appropriate case in which to end the growing confusion about the meaning and purpose of Miranda. The petition should be granted.

Respectfully submitted,

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JRB:emd
SA80DA0856
June 8, 1983